

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM E. MAPLES, SR.)	
Claimant)	
VS.)	
)	
PEABODY TECTANK)	
Respondent)	Docket Nos. 155,072 & 157,398
AND)	
)	
NATIONAL UNION FIRE INSURANCE COMPANY, INC.)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent and carrier appeal from an order entered by Administrative Law Judge Nelsonna Potts Barnes, dated August 8, 1995, setting the time and place of Preliminary Hearing, and from a subsequent Order issued by Administrative Law Judge Shannon S. Krysl dated September 14, 1995, awarding claimant temporary benefits. As Appeals Board Member Duncan Whittier has disqualified himself from participating in this proceeding, Board Member Pro Tem Ernest Johnson has been appointed to participate in this decision pursuant to K.S.A. 44-555b(i).

APPEARANCES

The claimant appeared by and through his attorney Patrick C. Smith of Pittsburg, Kansas. The respondent and its insurance carrier appeared by and through their attorney Randall D. Palmer of Pittsburg, Kansas. The Kansas Workers Compensation Fund

appeared by and through its attorney David Bideau of Chanute, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of preliminary hearing before Administrative Law Judge Shannon S. Krysl dated September 13, 1995, and the exhibits attached thereto, and the deposition of Theodore L. Sandow, Jr., M.D., dated July 24, 1995.

ISSUES

Two separate appeals have been lodged in this captioned case by the respondent and insurance carrier.

On August 8, 1995 Administrative Law Judge Nelsonna Potts Barnes advised the parties hereto by letter that the preliminary hearing requested by claimant would be held September 13, 1995, in Chanute, Neosho County, Kansas, pursuant to K.S.A. 44-534a(a)(2). Respondent and insurance carrier appeal from that letter order setting the preliminary hearing, asserting that the Administrative Law Judge exceeded her jurisdiction in denying the request of respondent and carrier that the said hearing be held in Labette County where the alleged accident occurred.

The preliminary hearing was then held in Neosho County as scheduled. Administrative Law Judge Shannon S. Krysl presided, and on September 14, 1995 the Administrative Law Judge issued an Order awarding claimant medical for his shoulder impingement syndrome through Dr. Theodore L. Sandow, Jr., and, if applicable, temporary total benefits. In the second appeal, respondent and carrier appeal from that Order asserting that the Administrative Law Judge exceeded her jurisdiction by failing to defer the preliminary hearing until a jurisdictional hearing had been conducted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For preliminary hearing purposes only, the Appeals Board, having reviewed the entire record, makes the following findings of fact and conclusions of law:

(1) Regarding the first appeal of respondent and insurance carrier, the Appeals Board finds the August 8, 1995 order scheduling a preliminary hearing, issued by Administrative Law Judge Nelsonna Potts Barnes, did not exceed the Administrative Law Judge's jurisdiction.

K.S.A. 44-534a(a)(2) specifically grants the Administrative Law Judge the authority to hold a preliminary hearing in any county designated by the Administrative Law Judge.

K.S.A. 44-551(b)(2)(A) provides that the Appeals Board shall not review a pending preliminary hearing award entered by the Administrative Law Judge unless it is alleged the Administrative Law Judge exceeded his or her jurisdiction in granting or denying relief requested.

Here respondent and carrier do not appeal from an award issued upon a preliminary hearing, but rather an order determining the place in which the hearing would be held. Since K.S.A. 44-534a(a)(2) specifically grants the Administrative Law Judge the authority to hold the preliminary hearing in any county designated by the Administrative Law Judge, the Administrative Law Judge did not exceed her jurisdiction.

As the Administrative Law Judge is empowered and has the authority to make such decisions regarding the place of hearing, the Appeals Board finds that it does not have jurisdiction to entertain this appeal of the order establishing the place of the preliminary hearing as this issue does not fall within one of the jurisdictional issues set forth in K.S.A. 44-534a(a)(2). This first appeal must therefore be denied.

(2) Regarding the second appeal of respondent and insurance carrier, the Appeals Board finds that Administrative Law Judge Shannon S. Krysl did not exceed her jurisdiction by refusing to defer the preliminary hearing until a preceding jurisdictional hearing had been conducted.

Respondent asserts that claimant failed to give timely notice to respondent of his alleged shoulder injury as required by K.S.A. 44-520. Respondent further asserts that claimant failed to make timely written claim for his alleged shoulder injury as required by K.S.A. 44-520a. The only injuries for which claimant had made specific claim were carpal tunnel syndrome (Docket No. 155,072, based on a claim of repeated trauma from the use of an airless paint gun from December 1988 through last day worked of March 15, 1991) and a back injury (Docket No. 157,398, based on a claimed accident while bending to pick up a can of paint on February 1, 1990). Because respondent interposed those defenses prior to the preliminary hearing, respondent argues that a separate hearing on those jurisdictional defenses should have been held prior to the preliminary hearing on temporary benefits for the shoulder injuries.

At the preliminary hearing before Administrative Law Judge Shannon S. Krysl on September 13, 1995, the Court heard testimony from claimant and received medical reports that connected the shoulder problems to the same job-related activities which gave rise to the carpal tunnel syndrome. Further, the Court had the deposition testimony of Dr. Sandow that, for preliminary purposes, established a causal link between the shoulder impingement syndrome and claimant's work for the respondent.

The attack of respondent is essentially, then, an appeal from the preliminary Order of Administrative Law Judge Shannon S. Krysl of September 14, 1995 awarding claimant

medical for his shoulder impingement syndrome through Dr. Theodore L. Sandow, Jr. and, if applicable, temporary total benefits.

K.S.A. 44-534a lists preliminary hearing findings, with regard to the following disputed issues as jurisdictional and subject to review by the appeals board:

- (a) Whether the employee suffered an accidental injury;
- (b) Whether the injury arose out of and in the course of employment;
- (c) Whether notice is given or claim timely made;
- (d) Whether certain defenses apply.

In the instant case and for preliminary purposes, the Appeals Board agrees with the Administrative Law Judge and finds in regard to timely notice and written claim that the claimant did give the required timely notice of his accidental injury as required by K.S.A. 44-520 and did make timely written claim for repetitive trauma to the upper extremities, including the shoulder, pursuant to K.S.A. 44-520a.

The Appeals Board, having found this claim compensable, considers that respondent may be arguing that the Administrative Law Judge wrongly determined the nature and extent of claimant's alleged injuries by including compensation for injuries to the shoulder. The Administrative Law Judge is authorized to make a preliminary award of medical treatment and temporary total disability compensation upon a finding that the claimant's alleged injury is compensable. See K.S.A. 44-534a(a)(2). Accordingly, there is no appealable issue at this stage of the proceeding pertaining to whether the Administrative Law Judge exceeded her jurisdiction in ordering medical treatment and, if applicable, temporary total disability. The issue as to whether or not the Administrative Law Judge erred in ordering temporary total disability compensation regarding the nature and extent of the otherwise compensable injuries is not reviewable by the Appeals Board.

AWARD

WHEREFORE, regarding the first issue of respondent and carrier on appeal, it is the finding, decision, and order of the Appeals Board that the August 8, 1995 order scheduling the preliminary hearing, issued by Administrative Law Judge Nelsonna Potts Barnes, did not exceed the jurisdiction of the Administrative Law Judge and remains in full force and effect.

WHEREFORE, regarding the second issue of respondent and carrier on appeal, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order, entered by Administrative Law Judge Shannon S. Krysl dated September 14, 1995, is affirmed and remains in full force and effect.

WILLIAM E. MAPLES, SR.

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IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Patrick C. Smith, Pittsburg, KS
Randall D. Palmer, Pittsburg, KS
David Bideau, Chanute, KS
Nelsonna Potts Barnes, Administrative Law Judge
Shannon S. Krysl, Administrative Law Judge
Philip Harness, Director